

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1313 OF 2005

Vasudev Balkrishna Chawhan .. Petitioner

VS.

The State of Maharashtra & Ors. .. Respondents

Mr.L.K.Tripathi for the Petitioner

Mr.G.D.Utangale with S.V.Chavan with M/s. C.
Utangale & Co. for Respondent No.1.

Mr.Pradeep Jadhav for Respondent Nos.1,3 and 4.

Mr.D.S.Sakhalkar for the Respondent No.5.

CORAM : Dr.D.Y.CHANDRACHUD, J.

DATED : 6th May, 2005.

P.C. :

1. A Slum Rehabilitation Scheme has been sanctioned by the Slum Rehabilitation Authority in respect of plot Nos.367, 368 and 342 of Town Planning Scheme(V) at Vile Parle. The dispute that arises in this proceeding is as to whether the petitioner is eligible to participate in the scheme. The petitioner was in the occupation of a hutment which came to be demolished for the purpose of implementing the Slum Rehabilitation Project. On 1.3.2001 an order of eviction was passed against the

petitioner by the Deputy Collector, Encroachment under Sections 33 & 38 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The Administrator and Commissioner, Konkan Division, thereafter passed an order on 26.2.2002 in which he noted that the Slum Rehabilitation Authority had reported that all the Appellants before him (the Petitioner being one of the Appellants) had independent structures which were included in the slum area in dispute. However, the question remained as to whether the structures of the Appellants in those proceedings had come up after 01.01.1995, in which event they would not be eligible to participate in the scheme. The Appellate authority confirmed the order of eviction since more than 70% of the slum dwellers had furnished their consent and the scheme was in process of implementation. The question of eligibility of the petitioner has thereafter been decided by the Slum Rehabilitation Authority by its order dated 14.9.2004. The Slum Rehabilitation Authority has concluded that the hut of the petitioner was located in an area outside the Slum Rehabilitation Scheme that was being implemented and that therefore the petitioner would not be eligible for alternative accommodation. The petitioner had

produced several documents before the authority including a ration card of 10.02.1987, an electoral identity card and the voters list of 1995.

2. There is merit in the contention of the petitioner that the finding of the authority in the impugned order is inconsistent with the factual position because if the petitioner's hut was not situated on land which was being developed under the Slum Rehabilitation project, there was no occasion to demolish it in the first place. The demolition was carried out for the purpose of the scheme as is apparent from the order of the Deputy Commissioner and the operative order of the Administrator both of which have been adverted to earlier. The Slum Rehabilitation Authority has not applied its mind to the documents produced by the petitioner and it is only appropriate to direct that this should be done by the authority. In the circumstances, the impugned order dated 14.9.2004 will have to be quashed and set aside. In order to facilitate a fresh decision of the Slum Rehabilitation Authority the order dated 14.9.2004 is quashed and set aside. The authority shall reconsider the eligibility of the petitioner afresh. The petitioner will be at liberty to file such further documents which he may

be advised to file within a period of one week from today. The petitioner shall appear before the authority on 13th June, 2005 at 11.00 a.m. on which date the authority shall consider the submissions of the petitioner on the basis of the documents produced before him. The authority shall pass orders thereafter within four weeks thereafter. The learned counsel appearing for the developer the 5th respondent, states that the premises which were in the occupation of the petitioner at present have already been demolished and that the petitioner would be provided with alternate transit accommodation in the same scheme and area. The learned counsel has assured the Court that the alternate accommodation shall be fit and habitable in all respects. The petitioner is ready to shift to the alternative transit accommodation within a week of intimation by the 5th respondent subject to the final determination of his eligibility by the SRA. In the circumstances, the consequential order passed on 19-01-2005 by the Deputy Collector (Encroachment) is also set aside.

3. The petition is, accordingly, disposed of.

(Dr.D.Y.Chandrachud, J)